

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PETER BRAMANTE,
MICHAEL BRAMANTE,
ERNEST COVINO,
ROBERT KAMINSKI,
ERNEST RAMEY,
CHRISTOPHER BRAMANTE, and
DONNA M. BRAMANTE,

Plaintiffs,

v.

DOUGLAS A. McCLAIN, SR.,
PADMORE HOLDINGS LTD.

Defendants.

THE NUNLEY FIRM, LLP,

Intervenor Plaintiff,

v.

PETER BRAMANTE,
MICHAEL BRAMANTE,
ERNEST COVINO,
ROBERT KAMINSKI,
ERNEST RAMEY,
CHRISTOPHER BRAMANTE, and
DONNA M. BRAMANTE,

Intervenor Defendants.

DOUGLAS A. McCLAIN, SR.,

Counter-Plaintiff,

v.

CIVIL ACTION NO.

SA-10-CV-0534 OG (NN)

PETER BRAMANTE,	§
MICHAEL BRAMANTE,	§
ERNEST COVINO,	§
ROBERT KAMINSKI,	§
ERNEST RAMEY,	§
CHRISTOPHER BRAMANTE, and	§
DONNA M. BRAMANTE,	§
Counter-Defendants,	§

ORDER GRANTING REURGED MOTION TO COMPEL (#84)

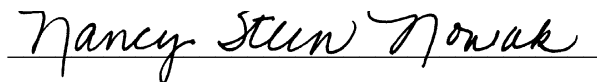
The matter before the Court is plaintiffs' reurged motion to compel, as well as intervenor Nunley Firm's response and plaintiff's reply (docket entries 84, 98 and 99).

The plaintiffs originally filed a motion to compel responses to interrogatories and requests for production (docket entry 75). Intervenor responded to the motion by supplementing prior submissions. I directed the plaintiffs to advise the Court whether these supplementations were adequate. Plaintiffs then reurged their motion, noting continuing inadequacies. Intervenor then further supplemented its responses.

The matter now remaining before the Court for resolution involves a single interrogatory. That interrogatory (interrogatory no. 2) asks: "Identify all unpaid amounts owed to you by Douglas A. McClain, Sr. by date or invoice/billing, amount of invoice/billing and the nature of the work performed." Intervenor responded (in its most recent response): "The total amount billed, according to our current accounting software, was \$343,170 of which \$114,551.63 was paid. The amount still due and owing, including amounts written off for accounting purposes, is \$228,619.15." The plaintiffs argue that amounts which intervenor has written off are not "owing" and therefore should be excluded from intervenor's response.

It is unnecessary for purposes of this discovery dispute to determine whether a debt which has been written off might continue to be the basis for a security interest. However, noting that intervenor's characterization of some portion of the debt as "written off" is potentially relevant, intervenor is ORDERED to supplement its response to interrogatory no. 2 and clearly state (1) that portion of \$228,619.15 (the total amount which intervenor states is still due and owing) which represents debts "written off" and (2) that portion of the amount owing which has not been "written off." Intervenor is ORDERED to supplement its response no later than January 14, 2011. The motion to compel is GRANTED.

SIGNED on January 6, 2011.

A handwritten signature in cursive script, reading "Nancy Stein Nowak", is written over a horizontal line.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE